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Attorney for Plaintiff/Counter-Defendant, MARY STRUBLE, As Conservator for CS

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

MARY STRUBLE, As Conservator for CS,

Plaintiff,

v.

FALLBROOK UNION HIGH SCHOOL
 DISTRICT, a Local Educational Agency
 Defendant.

FALLBROOK UNION HIGH SCHOOL
 DISTRICT,

Counterclaimant,

v.

MARY STRUBLE, As Conservator for CS,

Counter-Defendant,

CASE NO.: 07 CV 2328 LAB (CAB)

DECLARATION OF MARY STRUBLE IN
 OPPOSITION TO EX PARTE MOTION TO
 CONTINUE MANDATORY ENE
 CONFERENCE

Date: February 12, 2008

Time: 2:00 p.m.

Magistrate Judge: Hon. Cathy Ann
 Bencivengo

TO DEFENDANT/COUNTERCLAIMANT FALLBROOK UNION HIGH SCHOOL
 DISTRICT ("The District"), and its attorney of record:

1. I, Mary Struble am over 18 years of age, reside in Fallbrook, California, and am
 the mother and Conservator of my son, C.S. ("Student").

4. Student filed for an administrative due process hearing against the District, the purpose of which was to obtain a FAPE through the award of compensatory education.

5. To date, the District's only placement offer is back at Fallbrook High School, which is not an appropriate educational setting for Student, and is not compensatory for the years of FAPE that have been denied to Student by the District.

6. Student sincerely wants to earn his high school diploma as soon as possible.

7. Due to the District's actions, it is apparent that the District will never discuss any placement options for Student, other than at Fallbrook High School, unless there is input from the Federal Magistrate Judge leading to a settlement. The only other possibility is an Order on the appeal in favor of Student. As this could take some time, I am proceeding in good faith to try to resolve this case on February 12, 2008.

8. I am therefore, requesting that the ENE Conference not be continued. My attorney and I have cleared our schedules, and I am sure that counsel for the District will prevail upon OAH to allow the administrative hearing to break so that she can attend this ENE Conference.

I declare under penalty of perjury under the laws of the State of California, and the United State, that the foregoing is true and correct.

Executed this 7th day of February at Fallbrook, California.

Mary Struble

Mary Struble, Declarant

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 SOUTHERN DISTRICT OF CALIFORNIA**

MARY STRUBLE, As Conservator for CS,

Plaintiff,

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FALLBROOK UNION HIGH SCHOOL
 DISTRICT, a Local Educational Agency
 Defendant.

FALLBROOK UNION HIGH SCHOOL
 DISTRICT,

Counterclaimant,

v.

MARY STRUBLE, As Conservator for CS,

Counter-Defendant,

CASE NO.: 07 CV 2328 LAB (CAB)

DECLARATION OF ELLEN DOWD, ESQ.
 IN OPPOSITION TO EX PARTE MOTION
 TO CONTINUE MANDATORY ENE
 CONFERENCE

Date: February 12, 2008

Time: 2:00 p.m.

Magistrate Judge: Hon. Cathy Ann
 Bencivengo

TO DEFENDANT/COUNTERCLAIMANT FALLBROOK UNION HIGH SCHOOL
 DISTRICT ("The District"), and its attorney of record:

1. I, Ellen Dowd am over 18 years of age, and am attorney of record for Plaintiff,
 C.S. ("Student").

1 2. I make this declaration of my own personal knowledge, and, if called as a witness,
2 could and would testify competently hereto.

3 3. I make this declaration in opposition to the District's Motion for Continuance of
4 the ENE Conference scheduled for February 12, 2007.

5 4. I was attorney of record for the underlying administrative due process hearing.
6 The District refused to meet with my client in either a Resolution Session, or a Mediation. The
7 hearing was scheduled to start on October 15, 2007, however, due to the District's counsel,
8 Sharon Watt's vacation plans, she attempted to continue the hearing for over a month, although
9 she was returning from vacation on October 15th.

10 5. The administrative due process hearing took place from October 16, 2007 to
11 October 19, 2007.

12 6. The purpose of filing for due process was to obtain compensatory education for
13 Student so he could earn his high school diploma. While the Decision held that the District did
14 not provide Student with a FAPE throughout high school, the ALJ unlawfully delegated the
15 award of compensatory education to the District IEP Team.

16 7. On January 8, 2008, the District filed an Answer and Counterclaim in the instant
17 case.

18 8. On January 8, 2008, the District filed a separate case under Case No. 08 CV 0049
19 H (AJB) for the identical relief sought in its Counterclaim herein.

20 9. On January 29, 2008, I filed a Notice of Related Case in order to have the
21 District's duplicative case transferred to the District Court Judge and Magistrate Judge in this
22 case, so that I could prepare a Motion to Dismiss the which is due February 18, 2008.

23 10. On February 5, 2008, in late afternoon, I received a telephone message from
24 Filarsky & Watt indicating that this was a "meet and confer" and asking for date of March 18,
25 2008. The message did not reference a case number. This could have been a meet and confer
26 about the instant case, or the duplicate case. In any event, I was directed to return the call by 10
27 a.m. on February 6, 2008, however, I was unable to reach my client by that time, and did not
28 return the call.

1 11. I have read the Notice and Order For early Neutral Evaluation Conference. As
2 soon as I received it, I cleared my calendar, and instructed my client to clear her calendar.

3 12. According to the Order, any requests for continuance must be made at least 7 days
4 in advance and indicate good cause.

5 13. In my experience in participating in Due Process hearings before OAH, if a
6 Federal Court appearance is ordered, the due process hearing can go dark for a half-day.


7 14. As there is no indication in Ms. Watt's declaration that OAH was even contacted
8 to try to arrange going dark on the afternoon of February 12, 2008, and as my client is
9 completely in compliance of the Order, and is also at the mercy of the Court to assist in the early
10 resolution of this matter, as the District will not voluntarily participate in any settlement
11 resolution other than that Student can return to Fallbrook High School, the District's attempt to
12 continue this Conference must be denied.

13 15. Student has been eagerly awaiting receipt of compensatory education so he can
14 earn his high school diploma. Having him sitting at home, while the District continues to deny
15 him a FAPE, is not accomplishing this purpose.

16 16. I respectfully request that the District not be granted a continuance, as there is no
17 good cause stated, and, continuing this case will only delay justice, to Student's detriment.

18 I declare under penalty of perjury under the laws of the State of California, and the
19 United State, that the foregoing is true and correct.

20 Executed this 7th day of February at San Diego, California.
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23 Ellen Dowd, Declarant
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